

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DWIGHT SAMUEL O'CONNOR,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12328

Trial Court Case No. 3AN-11-08340CR

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or a witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

**APPELLANT DWIGHT SAMUEL O'CONNOR'S NOTICE OF SENTENCE
APPEAL**

Appellant Dwight Samuel O'Connor, by and through counsel Cashion Gilmore & Lindemuth, hereby provides notice of appeal of the three-judge panel's October 7, 2021, Memorandum and Order¹ adopting the sentence and judgment of June 29, 2015². The sentence imposed is excessive.

I. Procedural History

On June 4, 2015 Dwight "Sam" O'Connor was sentenced to twenty-five years with five years suspended for conviction of one count of sexual assault in the first

¹ Attachment A.

² Attachment B.

1 degree, AS 11.41.410(a)(1) by Anchorage Superior Court Judge Kevin Saxby. This
2 sentence included a fifteen-year period of probation with sexual offender special
3 probation conditions.

4 The conviction and sentence were appealed and on May 24, 2019, this court
5 remanded O'Connor's case for reconsideration of his request for referral to the three-
6 judge panel based on the non-statutory mitigator of extraordinary potential for
7 rehabilitation, and otherwise retained jurisdiction over this matter.

8
9 On November 3rd, 2020, a sentencing hearing for referral to the three-judge
10 panel was held in front of original sentencing judge Kevin Saxby, and was continued
11 to February 17, 2021, at which time O'Connor was referred to the three-judge panel
12 for sentencing based on the finding that manifest injustice would occur if O'Connor's
13 extraordinary prospects for rehabilitation were not considered.

14 On September 30th, O'Connor presented expert testimony from Dr. Kristy
15 Becker and supporting testimony from Lora Sinard (ex-wife), Vlada Sotskaya (close
16 friend) and Kelsey O'Connor (daughter). The state presented no evidence.

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18 At the conclusion of the hearing on September 30th, the three-judge panel
19 found that O'Connor had extraordinary prospects for rehabilitation but declined to
20 grant sentencing relief, and declined to sentence him, instead reverting to the June
21 4, 2015 sentence by Judge Saxby. The panel made him eligible for discretionary
22 parole after serving one-half of the June 4, 2015 sentence upon successful
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1 completion of a Department of Corrections (DOC) sex offender treatment program.³

2 The panel issued written orders on sentencing and parole eligibility on October
3 7, 2021 and this notice of appeal follows.

4 **II. Docketing Statement**

5 Defendant Dwight Samuel O'Connor is incarcerated at Goose Creek
6 Correctional Center, 22301 Alsop Road, Wasilla, Alaska 99654. He did not have co-
7 counsel status at trial and does not seek such status in the appellate court. By
8 separate motion, he asks for court-appointed counsel on his behalf.
9

10 **III. O'Connor's Trial Representation**

11 O'Connor was represented by Brendan Kelley at the Office of Public Advocacy
12 in his original trials through June 4, 2015. Kelley no longer practices in Alaska.

13 On remand to the trial court following this court's May 24, 2019 decision,
14 O'Connor was represented by undersigned counsel:

15
16 Dunnington Babb ABN 1005013
17 Cashion Gilmore & Lindemuth
18 510 L Street, Suite 601
19 Anchorage, AK 99501
20 907-222-7930, fax 907-222-7938

21 While this representation included status updates to the court of appeals, counsel
22 was not retained for appellate representation and will not proceed in such capacity.
23

24
25 ³ Attachment C.

1 **IV. Appellate Representation**

2 O'Connor was represented on appeal by:

3 Maureen Dey, ABN 9211063 and Jason Weiner ABN 9906031
4 Gazewood & Weiner, PC
5 1008 16th Avenue, Suite 200
6 Fairbanks, AK 99701
7 907-452-5196, fax 456-7058

8 Their representation was by court-appointed contract with the Office of Public
9 Advocacy.

10 **V. Prosecuting Attorney**

11 O'Connor was prosecuted at trial and sentencing by:

12 Chief Assistant Attorney General Jenna Gruenstein ABN 0912086
13 310 K Street, Suite 610
14 Anchorage, AK 99501
15 907-269-6250, fax 907-269-6321

16 **VI. Trial Court Proceedings**

17 The court of appeals has previously received the appropriate trial materials in
18 this matter leading to the court of appeals' May 24, 2019 decision and remanding for
19 sentencing.

20 Since that time, there have been three substantive hearings necessary for the
21 court of appeals' review.

VII. Trial Court Proceedings

Date of Hearing	Proceeding	Location
11/3/2020 9:00 a.m.	Sentencing Hearing	Nesbett Ctrm 603 Judge Saxby
2/17/21 9:00 a.m.	Continued Sentencing Hearing	Nesbett Ctrm 603 Judge Saxby
9/30/21 10:00 a.m.	3 Judge Panel Hearing	Supreme Court Courtroom Boney Courthouse Judges Aarseth, Stephens and Wells

VIII. Sentence being appealed

As stated above, the three-judge panel made a finding that O'Connor had extraordinary prospects for rehabilitation but refused to modify or impose sentence of any kind, instead reverting to the original June 4, 2015 sentence of Judge Saxby. O'Connor appeals his sentence of twenty-five years with five years suspended as excessive.

CASHION GILMORE & LINDEMUTH
Attorneys for Appellant

Date: November 8, 2021

s/ Dunnington Babb
Dunnington Babb
Alaska Bar No. 1005013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the
foregoing was served on
November 8, 2021 on the following:

VIA EMAIL

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VIA US MAIL

Hon. Kevin Saxby
Superior Court Judge
825 W. 4th Avenue
Anchorage, AK 99501

CASHION GILMORE & LINDEMUTH

By: s/Jennifer Witaschek

1 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

2 **THIRD JUDICIAL DISTRICT AT ANCHORAGE**

3 **STATE OF ALASKA,**

4 **Plaintiff,**

5 **v.**

6 **DWIGHT SAMUEL O'CONNOR,**

7 **Defendant.**

8 **Case No. 3AN-11-8340 CR**

9 **MEMORANDUM AND ORDER**

10 **1. Procedural Background**

11 Mr. O'Connor was convicted by a jury in 2015 of Sexual Assault 1st Degree and
12 is subject to a presumptive sentencing range of 20-30 years.¹ No statutory aggravating² or
13 mitigating factors³ were proffered. Anchorage Superior Court Judge Kevin M. Saxby declined
14 Mr. O'Connor's request that he refer the case to the Three-Judge Sentencing Panel (Panel) on the
15 basis of a non-statutory mitigating factor – Mr. O'Connor's exceptional prospects for
16 rehabilitation.⁴ Judge Saxby imposed a sentence of 25 years with 5 years suspended, placed Mr.
17 O'Connor on probation for 15 years and set certain general and special conditions of probation.
18

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21 ¹ See, AS 12.55.125(i)(1)(A)(ii). Mr. O'Connor was acquitted of two counts of Sexual Assault
22 1st Degree (Counts II, III) at a prior jury trial.

23 ² AS 12.55.155(c).

24 ³ AS 12.55.155(d).

25 ⁴ Judge Saxby found that Mr. O'Connor had not established by clear and convincing evidence
 that he has exceptional prospects for rehabilitation because he understood, evidently per *Lepley*
 v. *State*, 807 P.2d 1095, 1100 (Alaska App. 1991) and related Alaska caselaw, that in order to
 make such a finding he must understand what problems had led Mr. O'Connor to engage in the
 criminal conduct for which he had been convicted and that the problems were readily correctable

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1 Mr. O'Connor appealed his conviction and Judge Saxby's decision to not refer his
2 case to the Panel. The Court of Appeals affirmed his conviction and remanded the case to Judge
3 Saxby for further consideration of Mr. O'Connor's proposed non-statutory mitigating factor.⁵

4 Judge Saxby on remand noted that Mr. O'Connor had shown by a preponderance
5 of the evidence in 2015 that he has extraordinary prospects for rehabilitation, but not by clear
6 and convincing evidence as required, and Judge Saxby found that Mr. O'Connor was able to
7 make such a showing by clear and convincing evidence in 2021 based on his exemplary behavior
8 while incarcerated, even though Judge Saxby still was not able to determine what problems had
9 led Mr. O'Connor to commit the crime. So, Judge Saxby found that manifest injustice would
10 result if this non-statutory mitigating factor was not considered, and referred the case to the Panel
11 on that basis.

12 Mr. O'Connor also requests that the Panel exercise its authority to make him
13 eligible to apply for discretionary parole.
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19 or unlikely to recur, and he was not able to make at least the first such finding -- that he
understood why Mr. O'Connor had committed this offense.

20 ⁵ The Court clarified that a "totality of the circumstances test" must be applied to the issue of
21 whether a defendant has shown by clear and convincing evidence that the defendant has
22 exceptional prospects for rehabilitation -- that the defendant "can adequately be treated in the
community and need not be incarcerated for the full presumptive term in order to prevent future
23 criminal activity" - and that the trial Judge understanding why the defendant committed the
offense may be a consideration in this regard but is not a necessary requirement. *O'Connor v.*
24 *State*, 444 P.3d 226, 233 (Alaska App. 2019) (quoting *Kirby v. State*, 748 P.2d 757, 766 (Alaska
App. 1987). The Court noted that Judge Saxby had made findings concerning Mr. O'Connor's
25 prospects for rehabilitation which may support a finding that this non-statutory mitigating factor
had been proven, though the Court observed that there were also facts in the record that would
support a contrary finding.

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2. Parties' Positions

Mr. O'Connor requests that the Panel sentence him to a term of 10 years of jail time to serve, and make him immediately eligible to apply for discretionary parole, on the basis of his exceptional prospects for rehabilitation claim. He does not oppose the Panel imposing at least 5 years of suspended jail time or the Panel placing him on supervised probation for 15 years subject to the probation conditions imposed by Judge Saxby in his 2015 Judgment.

The State contends that Mr. O'Connor has not shown that he has exceptional prospects for rehabilitation or that the Panel should grant him eligibility for discretionary parole, and requests that the Panel decline the case.

3. Panel Hearing

The Panel hearing was held on September 30, 2021. The parties appeared.⁶ Mr. O'Connor presented evidence.⁷

⁶ Counsel of record, Mr. O'Connor, the Panel members, and three of Mr. O'Connor's four witnesses appeared in person and participated in the hearing in compliance with applicable COVID-19 protocols.

⁷ Mr. O'Connor relied on the evidence already in the record and during the Panel hearing presented the expert testimony of Dr. Kristy Becker and the testimony of Lora Sinard, Valdena Sotskaya, and Kelsey O'Connor. The Panel also considered the information in the record referenced at the outset of the Panel hearing, including: the charging documents; the 2015 trial transcript; the transcripts of the June 4, 2015, November 3, 2020, and February 17, 2021 sentencing hearings; Judge Saxby's June 4, 2015 Judgment and Order of Commitment/Probation; the Pre-Sentence Report (PSR), corrected PSR, Updated PSR, and 4 PSR Addendums; Dr. Becker's January 23, 2020 report; Mr. O'Connor's worksheet; letters of support submitted by Ms. Sinard, Ms. O'Connor, Ms. Sotskaya, Lottie Michael, Danica Reindl, Christine Lamoureux, Thelma (last name illegible on the handwritten letter and provided during the Panel hearing), Fed Cosentino, Jeri and Liz Thompson, Charles Meyer, Amanda Sebwenna,

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A. Panel Decision - Synopsis

The Panel found with respect to Mr. O'Connor's proposed non-statutory mitigating factor that: based on the totality of the circumstances he had established by clear and convincing evidence that he has unusually favorable prospects for rehabilitation, but this mitigating factor does not warrant the Panel reducing his sentence below the applicable presumptive sentencing range given the pertinent facts and the Panel's application of the *Chaney*⁸ sentencing criteria, so the Panel does not accept the case on this ground and the sentence imposed by Judge Saxby remains in effect.⁹

Earl Houser, Correctional Officer (CO) Savage; Judge Saxby's referral to the Panel; and, the sentencing briefing and related exhibits filed by the parties in the trial court and with the Panel.

⁸ *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970). *See also*, AS 12.55.005.

⁹ This decision presented a procedural situation in which the Panel found that the non-statutory mitigating factor had been established but it did not warrant a reduction in Mr. O'Connor's jail sentence below the presumptive range, but the Panel also decided to make him conditionally eligible for discretionary parole. So, the Panel did not accept the case for purposes of re-sentencing Mr. O'Connor based on the proposed non-statutory mitigating factor but did accept the case for the limited purpose of making him conditionally eligible for discretionary parole, which did not involve re-sentencing Mr. O'Connor. This caused some confusion for the Panel, and the parties, at the conclusion of the hearing as evidenced by the related discussion. The Panel expressed the view that under these circumstances Judge Saxby's Judgment would remain in effect or, if a new Judgment issued by the Panel somehow was required the Panel adopted Judge Saxby's Judgment as the Panel was not re-sentencing Mr. O'Connor and thus was not modifying the Judgment (and the Panel agreed with Judge Saxby's Judgment), and the Panel would issue an order addressing discretionary parole. The Panel may not have specifically stated it was not taking the case on the basis of the non-statutory mitigating factor but based on the caselaw hereafter discussed, that is what actually occurred. The Panel, on further consideration, believes that this is the correct procedure – the Panel in fact did not accept this case for re-sentencing purposes, so Judge Saxby's Judgment remains in effect, and the Panel is addressing discretionary parole in a separate order. This Panel had not addressed the same situation in a prior case. The Panel in *State v. Johnny Monigok Jack*, 3AN-15-2770 CR followed a similar procedure in a somewhat similar situation. The trial judge therein referred the case to the Panel without sentencing Mr. Jack based on findings that manifest injustice would result if Mr. Jack was sentenced within the presumptive range, whether or not adjusted for aggravating and mitigating factors, and if he was not made eligible to apply for discretionary parole. The Panel agreed with respect to the second but not the first finding. The Panel ordered that Mr. Jack

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1 The Panel granted Mr. O'Connor's request to be made eligible for discretionary
2 parole, albeit only once he has served one-half of his jail sentence and conditioned on his
3 successfully completing a sex offender treatment program (SOTP) while incarcerated, as he had
4 established by clear and convincing evidence based on the totality of the circumstances that
5 manifest injustice would result if was not made so conditionally eligible.
6

7 The Panel advised that this Memorandum and Order addressing the Panel's
8 findings and an order providing for Mr. O'Connor's discretionary parole eligibility would be
9 forthcoming.¹⁰ This Memorandum and Order is intended to incorporate, supplement, and, if
10 necessary, clarify the same.¹¹

11 **B. Scope of the Referral**

12 The Panel addressed the scope of the matters before the Panel pre-hearing in a
13 September 22, 2021 Order and also at the outset of the hearing. The Panel's view is that the
14 scope of its consideration of a case is limited to the basis of the trial judge's referral to the
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18 would be eligible for discretionary parole and, with the parties' agreement, remanded the case to
19 the trial judge to impose sentence.

20 ¹⁰ Criminal Rule 32.4(e) provides that the Panel "shall provide a written statement of its findings
21 and conclusions in support of any order remanding a case to the referring judge." The Panel is in
22 effect remanding the case as the Panel did not find that a sentence below the low end of the
23 presumptive range as imposed by Judge Saxby is warranted based on the Panel's view of the
24 facts and application of the *Chaney* sentencing criteria. The Panels' view is that the Panel can
25 address the discretionary parole situation by means of an order rather than by issuing an entirely
new judgment. In any event, the Panel's practice over the past few years has been to issue such a
written statement for every case, whether remanded or not, and to send the same to the Alaska
Court System's Law Library, in an effort to provide attorneys and trial judges with information
that may be useful in requesting referrals to the Panel and in deciding such requests.

¹¹ The Panel notes that there is simply not enough time at the conclusion of a Panel hearing for
the Panel to be able to fully articulate and address each and every point considered when verbally
announcing the Panel's decision.

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1 Panel,¹² with the possible exception of the Panel's authority to make a defendant eligible for
2 discretionary parole.

3 Alaska Statute 12.55.165(a) provides that:

4 If the defendant is subject to sentencing under AS 12.55.125(c),(d),(e), or (i) and
5 the court finds by clear and convincing evidence that manifest injustice¹³ would
6 result from failure to consider relevant aggravating or mitigating factors [non-
7 statutory mitigating factors] not specifically included in AS 12.55.155 or from
8 imposition of sentence within the presumptive range, whether or not adjusted for
9 aggravating or mitigating circumstances, the court shall enter findings and
10 conclusions and cause a record of the proceedings to be transmitted to a three-
11 judge panel for sentencing under AS 12.55.175.

12 Judge Saxby, per Mr. O'Connor's request, referred this case to the Panel on the
13 basis of his finding that manifest injustice would result from a failure to consider a relevant
14 mitigating factor not specifically included in AS 12.55.155 – Mr. O'Connor's exceptional
15 prospects for rehabilitation. Mr. O'Connor did not contend in the trial court, and Judge Saxby
16 did not find, that manifest injustice would result if he is sentenced within the presumptive
17 sentencing range, whether or not adjusted for aggravating or mitigating circumstances.¹⁴

18 Mr. O'Connor mentioned eligibility for discretionary parole during the February
19 17, 2021 hearing but it was not then a focus of the parties or Judge Saxby. Judge Saxby did not
20 mention discretionary parole in his verbal findings at the conclusion of the hearing or in his
21 subsequent written referral to the Panel. Mr. O'Connor nonetheless requests that the Panel make
22 him immediately eligible to apply for discretionary parole.

23 The Panel in the September 22, 2021 Order expressed the tentative view that it
24 would also address Mr. O'Connor's discretionary parole request during the Panel hearing

25 ¹² *See, Luckart v. State*, 270 P.3d 816, 820 (Alaska App. 2012).

¹³ All emphasis is added by the Panel unless otherwise noted.

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1 because: the Panel has authority to address such requests;¹⁵ eligibility for discretionary parole is
2 not a listed basis for referral in AS 12.55.165(a);¹⁶ Mr. O'Connor had mentioned the matter
3 during the February 17, 2021 hearing and Judge Saxby did not expressly decline to make a Panel
4 referral on that basis; and, the State had fair notice of the matter.

5 The Panel's understanding after addressing these matters with the parties during
6 the hearing is that the parties agree with the Panel's views with respect to the scope of Judge
7 Saxby's referral and that the court could consider Mr. O'Connor's request for discretionary
8 parole eligibility.
9

10 **C. Potential Sentencing Issues**

11 Mr. O'Connor committed the Sexual Assault 1st Degree in 2011. He was
12 convicted in 2015. He was initially sentenced in 2015. SB 22 was enacted in 2013. SB 91 was
13 enacted in 2016. SB 54 was enacted in 2017. HB 49 was enacted in 2019. SB 22, SB 91, SB
14 54, and HB 49 made changes affecting aspects of the sentencing and parole eligibility of persons
15 convicted of Sexual Assault in the 1st Degree. The Panel attempted in the September 22, 2021
16 Order to identify for the parties in advance of the hearing related potential issues that could arise
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19 ¹⁴ AS 12.55.165(a) provides "two discrete" grounds for referral to the Panel. *Garner v. State*,
20 266 P.3d 1045, 1048 (Alaska App. 2011). *See also, Kirby*, 748 P.2d at 762.

21 ¹⁵ Explicit authority per AS 12.55.175(e), and implicit authority per AS 12.55.175(c). *See,*
22 *Luckart v. State*, 314 P.3d 1226, 1234 (Alaska App. 2013).

23 ¹⁶ The Alaska Court of Appeals has indicated that the Panel may address a discretionary parole
24 request that was not a basis for the trial Judge's referral (and the Judge had not declined to refer
25 the case on that basis) but which was presented by the defendant during the Panel hearing. *See,*
26 *Ballalo v. State*, 2017 WL 3971822 (Alaska App. September 6, 2017) (cited per *McCoy v. State*,
27 80 P.3d 757, 760-62 (Alaska App. 2002)). And the Court of Appeals has indicated that a trial
28 Judge may refer a case to the Panel on this basis, though it is not listed as a ground for referral in
29 AS 12.55.165. *See, Lochridge v. State*, 2016 WL 3220952 (Alaska App. June 8, 2016) (cited
30 per *McCoy*). The Panel independently reached a similar conclusion in *State v. Timothy Tanberg*,
31 4FA-16-619 CR.

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1 if the Panel accepted the case and imposed sentence, and the Panel addressed the same with the
2 parties at the outset of the hearing.

3 1. Minimum Suspended Jail Sentence

4 Alaska Statute 12.55.125(o) was in effect in 2011 (date of crime) and in 2015
5 (date or sentencing), and provided that a court must impose at least 5 years of suspended jail time
6 when sentencing a first-time felony offender convicted of Sexual Assault 1st Degree, such as Mr.
7 O'Connor. SB 91 repealed AS 12.55.125(o).¹⁷ SB 54 added AS 12.55.125(q) which includes a
8 5-year minimum period of suspended jail time for persons in Mr. O'Connor's situation. HB 49
9 made some changes to AS 12.55.125(q). These changes made by SB 54 and HB 49 apply to
10 sentences imposed on or after the respective effective dates for conduct occurring on or after said
11 effective dates.¹⁸

13 The Panel's tentative view as expressed in the September 22, 2021 Order was that
14 if the Panel accepts the case and imposes sentence then AS 12.55.125(o) applies based on the
15 Court of Appeals' related discussion in *O'Connor* and the fact that SB 91 had vacated subsection
16 (o) but then had, in effect, been repealed by SB 54 and neither SB 54 nor HB 49 apply to Mr.
17 O'Connor.

18 The Panel's view as of the time of the Hearing¹⁹ was that if the Panel imposes
19 sentence then SB 91 applies as SB 91 repealed AS 12.55.125(o) and though SB 54 added a 5-
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22 ¹⁷ Section 179 of SB 91. The effective date of section 179 was July 1, 2015 per section 188.

23 ¹⁸ Per section 31(b)(4) of SB 54 and section 142(b)(9) of HB 49.

24 ¹⁹ The Panel observed in the September 22, 2021 Order that the Court in *O'Connor* had stated
25 that Mr. O'Connor was subject to the 5-year minimum suspended jail time requirement (444
P.3d at 232) and that if the Panel accepted the case and resentenced Mr. O'Connor the Panel was
required to abide by the Court's determination. But the Panel on further review decided that the
Court was likely simply stating what Judge Saxby was required to do at the time of the 2015
sentencing rather than making a finding based on consideration of SB 91 and the subsequent

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1 year minimum period of suspended jail time and HB 49 addressed the same, neither applies to
2 Mr. O'Connor due to the date of his offense, and the repeal of subsection (o) was an ameliorative
3 modification made before Mr. O'Connor was sentenced.²⁰ The parties indicated their agreement
4 during the Panel hearing.²¹

2. Probation - Minimum Term

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6 Alaska Statute 12.55.155(o) also included a requirement that a defendant in Mr.
7 O'Connor's position be subject to a minimum 15-year term of probation. Subsection (o), as
8 noted above, was repealed by SB 91. SB 54 added a minimum 15-year term of probation in
9 subsection (q), HB 49 made modifications to subsection (q), and, as noted above, neither SB 54
10 nor HB 49 apply to Mr. O'Connor.
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12 The Panel's tentative view as expressed in the September 22, 2021 Order was that
13 AS 12.55.155(o) applies if the Panel imposes sentence, but the Panels' view at the time of the
14 hearing was that SB 91 applies under such circumstances for the reasons stated above with
15 respect to suspended jail time. The parties indicated their agreement during the Panel hearing.²²
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20 legislation that this requirement would apply if he is sentenced now, noting the lack of related
analysis in the decision, and the Panel stated as much during the hearing.

21 ²⁰ *See, State v. Stafford*, 129 P.3d 927, 930-33 (Alaska App. 2006).

22 ²¹ In any event, this matter is moot as the Panel did not accept the case based on Mr. O'Connor's
proposed non-statutory mitigating factor and impose sentence, and under the circumstances
23 Judge Saxby's pre-SB 91, SB 54, and HB 49 2015 Judgment remains in effect. The Panel also
notes that Judge Saxby imposed 5-years of suspended jail time and Mr. O'Connor does not
object to the same.

24 ²² In any event, this matter is also moot for the same reasons stated above with respect to the
prior potential issue. The Panel also notes that Judge Saxby imposed a 15-year probation term,
25 though he had the authority to impose up to 25-years of probation, and Mr. O'Connor does not
object to the same.

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3 **3. Probation - Maximum Term**

4 Alaska Statute 12.55.090(c)(1) in 2011 and through 2015 provided for a 25-year
5 maximum term of probation for persons convicted of felony sex offenses. SB 91 revised AS
6 12.55.090(c)(1) in 2016 so that the maximum for such offenses is 15-years.²³ This revision
7 applies to probation ordered on or after the effective date of the revision for offenses committed
8 before, on, and after the effective date.²⁴ SB 54 did not make related changes. HB 49 revised AS
9 12.55.090(c)(1) by adding a 25-year maximum period of probation for felony sex offenses.²⁵
10 This revision applies to probation ordered on or after the effective date of the revision for
11 conduct occurring on or after the effective date.²⁶

12 The Panel's tentative view as stated in the September 22, 2021 Order was that the
13 2011-15 version of AS 12.55.090(c)(1) applies if the Panel imposes sentence for similar reasons
14 as discussed above with respect to the other potential issues.

15 The Panel's view at the time of the hearing was that the SB 91 version would
16 apply for basically the same reasons as addressed above with respect to the other potential issues.
17 The parties indicated their agreement during the Panel hearing.²⁷

18 **4. Discretionary Parole**

19 The Panel and the parties agree that Mr. O'Connor is not eligible for discretionary
20 parole per AS 33.16.090 unless made eligible by the Panel under the version of AS 33.16.090(a)

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22 ²³ Section 79 of SB 91.

23 ²⁴ Section 185(i) of SB 91.

24 ²⁵ Section 68 of HB 49.

25 ²⁶ Section 142(c)(1) of HB 49.

²⁷ In any event, this matter is also moot for the same reasons stated above with respect to the
prior potential issues. The Panel also notes that Judge Saxby imposed a 15-year term of
probation and Mr. O'Connor does not object to the same.

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1 in effect from 2011-15 and under any revisions to AS 33.16.090(a) made by SB 91, SB 54, and
2 HB 49.

3 **5. Mandatory Parole**

4 Alaska Statute 33.16.010 addresses mandatory parole and provides that
5 mandatory parole is based on eligibility for statutory good time per AS 33.20.010. Alaska
6 Statute 33.20.010 in 2011 provided that a person in Mr. O'Connor's circumstances could earn
7 statutory good time and thus be released on mandatory parole.²⁸ The legislature in SB 22 revised
8 AS 33.20.010 in 2013 to provide that defendants convicted of unclassified felony sex offenses,
9 such as Sexual Assault 1st Degree, are not eligible to earn good time.²⁹ The 2013 revision
10 applies to offenses committed on or after the effective date of the revision.³⁰

11
12 The Panel's tentative view as stated in the September 22, 2021 Order was the
13 2013 revision did not apply to Mr. O'Connor, so he is eligible to earn good time and based
14 thereon be released on mandatory parole. That was the Panel's view at the Hearing and the
15 parties indicated their agreement with the Panel's position during the Hearing.³¹

16 **D. Non-Statutory Mitigating Factor**

17 Alaska Statute 12.55.165(a) in pertinent part provides that a trial court judge can
18 refer a case to the Panel based on a finding that the defendant has shown by clear and convincing
19

20
21 ²⁸ Under the 2011 version of AS 33.20.010 only a person convicted of felony sex offense who
22 had one or more prior convictions for a felony sex offense would be ineligible for statutory good
23 time.

24 ²⁹ *See*, AS 33.20.010(a)(1)(3)(B).

25 ³⁰ The revision was made in section 33 of SB 22, and section 46(a) thereof states the prospective
scope of the revision.

³¹ This matter also appears to be a moot because, as noted by the Panel during the hearing, Mr.
O'Connor's eligibility is what it is, and a determination of eligibility for mandatory parole by the
Panel is only required for truth-in-sentencing purposes per AS 12.55.025(m), and, in any event,

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1 evidence that manifest injustice would result from a failure to consider a relevant mitigating
2 factor that is not included as a statutory mitigating factor under AS 12.55.155(d). The Alaska
3 Court of Appeals has held that trial court Judge who makes such a finding “must grant the
4 defendant’s request for referral to the three-judge panel unless the [judge] concludes that ‘no
5 adjustment to the presumptive [range] is appropriate in light of the factor.’”³²

6 The Alaska Court of Appeals has recognized a non-statutory mitigating factor
7 based on a defendant’s prospects for rehabilitation characterized as exceptional, extraordinary, or
8 unusually favorable prospects for rehabilitation.³³

9 The Alaska Court of Appeals has identified a number of factors that may be
10 considered by the trial court judge in deciding to make a referral on this basis and by the Panel in
11 reviewing such a referral, which include:

- 12 1. The defendant’s juvenile record (if any).
- 13 2. The defendant’s adult criminal record (if any).
- 14 3. The defendant’s employment history.
- 15 4. The defendant’s education and how well the defendant performed in school.
- 16 5. Whether the defendant has engaged in extra-curricular activities.
- 17 6. The existence and extent of the defendant’s family ties.
- 18 7. Whether the defendant has continuing family support.

19 the Panel did not accept the case based on the proposed non-statutory mitigating factor and so
20 did not impose sentence.

21 ³² *Daniels v. State*, 339 P.3d 1027, 1031 (Alaska App. 2014) (quoting *Kirby*, 748 P.2d at 765).
22 *See also, Garner*, 266 P.3d at 1047.

23 ³³ *See, Kirby*, 748 P.2d at 766 (unusually good prospects for rehabilitation); *O’Connor*, 444
24 P.3d at 232 and *Olmstead v. State*, 477 P.3d 656, 661 (Alaska App. 2020) (extraordinary
25 potential for rehabilitation); *Garner*, 266 P.3d at 1047(exceptional prospects for rehabilitation).
The Court of Appeals evidently considers these descriptive terms to be interchangeable.

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- 1 8. Whether the defendant is youthful.
- 2 9. Whether the defendant has expressed remorse for the criminal conduct.
- 3 10. Whether the defendant has engaged in needed treatment.
- 4 11. The evaluation of the defendant in the PSR.³⁴
- 5 12. Whether the Judge/Panel understands the problems that led the defendant to
- 6 commit the offense.³⁵
- 7 13. Whether the Judge/Panel can conclude that said problems are readily
- 8 correctable or unlikely to recur.
- 9 14. In the sex offense context, whether the defendant has a history of
- 10 unprosecuted sex offenses.³⁶
- 11 The Defendant bears the ultimate burden of proving by clear and convincing
- 12 evidence based on the totality of the circumstances that "he or she can be adequately treated in
- 13 the community and need not be incarcerated for the full presumptive term in order to prevent
- 14 future criminal activity."³⁷

15 The Panel found that a very close question was presented.

16 ³⁴ The list to this point is based primarily on *Smith v. State*, 711 P.2d 561, 570 (Alaska App.

17 1985) and *Daniels*, 339 P.3d at 1030-31.

18 ³⁵ See, *Lepley*, 807 P.2d at 1100; *Beltz*, 980 P.2d at 481; *Smith v. State*, 258 P.3d 913, 917

19 (Alaska App. 2011). Such a finding is not a pre-requisite to the trial court judge or the Panel

20 finding this non-statutory mitigator has been established but such a finding, or the lack thereof,

21 remains a consideration. See, *O'Connor*, 444 P.3d at 234.

22 ³⁶ This consideration is based on *Collins v. State*, 287 P.3d 791, 796-97 (Alaska App. 2012).

23 Under *Collins* such a finding basically constituted a non-statutory mitigating factor. The

24 legislature in 2013 added AS 12.55.165(c) and AS 12.55.175(f), which apply to offenses

25 committed before, on, and after July 1, 2013 and which in effect overruled *Collins*. But the

26 Court of Appeals has recognized that this factor can still be considered as part of the totality of

27 the circumstances with respect to whether manifest injustice would result if a defendant is

28 sentenced within the presumptive range, whether or not adjusted for aggravating or mitigating

29 factors. See, *State v. Seigle*, 394 P.3d 627, 637 (Alaska App. 2017). The Panel's view is that

30 this factor may also similarly be considered in assessing the prospects for rehabilitation of a

31 defendant convicted of a felony sex offense.

32 ³⁷ *Boerma v. State*, 843 P.2d 1246, 1248 (Alaska App. 1992) (quoting *Kirby*, 748 P.2d at 766).

33 See also, *O'Connor*, 444 P.3d at 233.

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1 The Panel identified factors which supported Mr. O'Connor's request, including:

- 2 1. He has no juvenile record.
- 3 2. He has no material adult criminal record (a 1979 negligent driving and a 2003
- 4 taking illegal Dall Sheep – insufficiently curled horns).
- 5 3. There is no evidence in the record of his having a history of unprosecuted sex
- 6 offenses.³⁸
- 7 4. He is a high school graduate and has some post-secondary vocational
- 8 education.
- 9 5. He has a good employment history.
- 10 6. His employer at the time of his incarceration viewed him as an outstanding
- 11 employee and presently has the same view and is willing to have him return to
- 12 his prior position when released and to provide on-site housing for him if
- 13 needed.
- 14 7. He has the support of co-workers.
- 15 8. He has strong family support – his ex-wife Ms. Sinard and daughter Ms.
- 16 O'Connor.
- 17 9. He has the strong support of many friends, including Ms. Sotskaya.³⁹
- 18 10. He has the support of Ms. Sebwanna, for whom he functioned as a foster
- 19 parent for several months some years ago.
- 20 11. He has participated in “extra-curricular activities,” including:
- 21 a) Community Service Patrol for some 20 years.
- 22 1) Weekend patrol.
- 23 2) Spoke to community groups.

24 ³⁸ The State at times in this case has insinuated that Mr. O'Connor used his position as a
25 community patrol volunteer to engage in similar conduct in the past, and that on this occasion he
used his official-looking vehicle to commit the Sexual Assault 1st Degree offense. The record
does not support either assertion.

³⁹ Mr. O'Connor's employment situation, housing, positive peer group, supportive friends, and
supportive family, all involve circumstances that existed when he committed the sexual assault,
are among the positive protective and rehabilitative factors identified by Dr. Becker.

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- 1 3) Fundraising events for local law enforcement – purchase of protective
2 gear and Christmas presents and decorations for children.
3 4) Public Safety Advisory Board for some 9 years.
4 5) Public Safety Officer for Spenard Community Council for some 6
5 years.
6
7 b) Plowed parking lots (i.e. Catholic Social Services).
8 c) The Willawa project.
9 d) Numerous outdoor recreational activities.
10 e) Starting a chess club while incarcerated.
11 f) Music (keyboards) while incarcerated.
12 g) Worked on cars (per Ms. Spinard's Panel hearing testimony).
13
14 12. He did not violate the conditions of this third-party release during the
15 approximately 3 ½ years of his pre-trial release.
16
17 13. STATIC-2002R – an actuarial tool designed to assist in predicting sexual and
18 violent recidivism for sex offenders – not validated for Alaska sex offenders
19 but used by DOC as the best available instrument for this purpose at the time
20 – he scored in lowest risk category.
21
22 14. A favorable evaluation in the Updated PSR.
23
24 15. His exemplary conduct while incarcerated – his valued employment, his
25 completion of a course, his lack of infractions, his organizing the chess club –
as evidenced in part by the supporting communications from CO Savage and
Superintendent Houser, and the related February 17, 2021 testimony by
Probation Officer Rodney Torgerson.
16. Dr. Becker's expert opinion⁴⁰ – expressed in her January 23, 2020 report and
during her November 3, 2020 and Panel hearing testimony – that Mr.

⁴⁰ Dr. Becker is a licensed clinical psychologist with a doctorate in clinical psychology (with a forensic emphasis) whose work history includes employment: in a maximum security prison, as a parole officer supervising sex offenders, as the chief forensic psychologist at API, and in private practice. She has performed psychiatric evaluations for the federal government and Alaska courts. She has testified more than 50 times in Alaska courts as an expert in the areas of forensic psychology and clinical psychology. She met with Mr. O'Connor for over 3 hours at the Goose Creek Correctional Center on December 4, 2019 at the request of his counsel in order to evaluate his risk of reoffending and his potential for rehabilitation.

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1 O'Connor presents little risk of reoffending and is an unusually good
2 candidate for consideration for rehabilitation in the community based on:

3 a) His lack of atypical sexual interests and antisocial personality traits, which
4 generally are the two major risk factors for sex offenders:

5 1) The results of the Personality Assessment Inventory (PAI) reflect that
6 his clinical profile is within normal limits.

7 2) Per the PAI he presents as a person interested in and motivated to
8 complete treatment.⁴¹

9 3) Her clinical observations were all normal.

10 4) There is no evidence that he suffers from a psychiatric disorder.

11 5) He does not have atypical sexual interests. His sexual development
12 was normal. He reported he had a healthy sex life with his wife at the
13 time of the offense.⁴²

14 6) He has a history of rule-following which reflects he is likely to comply
15 with probation conditions, including treatment requirements.

16 b) The STATIC-99R – an actuarial tool which measures relative risk for
17 sexual recidivism – he measured in the below average risk category for
18 sexual recidivism – 1-3 persons out of 100 in this category will reoffend
19 within 5 years, and after 5 years the risk is reduced by some 50%. Sex
20 offenders, in general, have a relatively low rate of recidivism.

21 c) Positive dynamic factors -- his pro-social/non-criminal peer group,
22 community support, family support, stable employment.

23 d) The actual criminal conduct is taken as a given in her analysis and does
24 not materially figure into her assessment unless it involved predatory or
25 extremely violent behavior – which were not present in this case.⁴³

26 ⁴¹ Though Mr. O'Connor did not actually express such an interest or motivation.

27 ⁴² Mr. O'Connor did not tell Dr. Becker about his erectile dysfunction (ED). She considers this
28 to have been an oversight – noting she did not specifically ask him a related question – rather
29 than his understanding the potential importance of this information to her evaluation given the
30 facts of the case and being untruthful or evasive, and this information does not change her
31 opinions concerning his prospects for rehabilitation or his risk of reoffending, though she has not
32 read P.A.B.'s trial testimony which references his ED, as ED is a physical condition and not a
33 sexual deviancy.

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- 1 e) His evasiveness with the police and the jury do not materially affect her
2 assessment.
- 3 f) His denial that he committed the offense does not materially affect her
4 assessment because denial has not been shown to be a factor with respect
5 to recidivism or rehabilitation.⁴⁴
- 6 g) A person's past behavior generally is the best predictor of future behavior
7 and he does not have a history of past bad behavior, his criminal conduct
8 in this case is evidently an isolated incident.

9 The Panel also identified negative factors in this regard, including:

- 10 1. Mr. O'Connor's lack of remorse.⁴⁵
- 11 2. His continued denial that he committed the offense.⁴⁶
- 12 3. His failure to provide an explanation for why he committed the offense.⁴⁷
- 13 4. His deceptiveness with the police.⁴⁸
- 14 5. His deceptiveness before the jury.⁴⁹

15 ⁴³ Dr. Becker, as previously noted, was not provided and so did not review the victim's (P.A.B.)
16 trial testimony.

17 ⁴⁴ Dr. Becker relied on a 2013 meta-analysis performed by Dr. Zelig. Dr. Becker testified
18 during the November 3, 2020 hearing that she does not know why Mr. O'Connor committed the
19 offense and that is not relevant to what the defense asked her to consider – risk and rehabilitation
20 – though it would be relevant with respect to the appropriate treatment he receives. She also
21 testified that sex offender treatment (SOTP) would be necessary and that there are quality SOTP
22 providers in the Anchorage area.

23 ⁴⁵ Mr. O'Connor did state during one or both of his two allocutions -- before Judge Saxby and
24 the Panel -- that he takes full responsibility for the events on the night in question -- but the only
25 remorse he expressed was that he had been unfaithful to his wife, which caused him to feel
related guilt -- and he has not expressed any remorse with respect to P.A.B. or any empathy or
demonstrated any insight with regards to the physical, mental, and emotional harm he caused
her.

⁴⁶ *See, Beltz*, 980 P.2d at 481;

⁴⁷ This situation affects the ability of the Panel to make findings with respect to whether the
conditions which led to the commission of this offense will not recur. *See, Beltz*, 980 P.2d at
474; *Manrique v. State*, 177 P.3d 1188, 1194 (Alaska App. 2008).

⁴⁸ *See, O'Connor*, 444 P.3d at 235. Mr. O'Connor during his 2015 trial testimony
acknowledged that he had been dishonest when interviewed by the police. Transcript at pp.
1103, 1177. And additional related trial testimony was provided by Detective Jade Baker.

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1 The Panel found that Mr. O'Connor had shown, barely, by clear and convincing
2 evidence that he has unusually good prospects for rehabilitation,⁵⁰ that: "he or she can be
3 adequately treated in the community and need not be incarcerated for the full presumptive term
4 in order to prevent future criminal activity."⁵¹

6 **D. Sentence or Remand**

7 The Panel, having made the foregoing decision:

8 must then assess the proper sentence, applying the *Chaney* sentencing criteria and
9 taking the mitigating factor into consideration. If the sentence the three-judge
10 panel would impose is outside the range of sentences the sentencing judge is
11 authorized to impose, the panel must retain jurisdiction and impose [] sentence . .
12
13
14

15 ⁴⁹ Mr. O'Connor testified that he did not rape or otherwise take advantage of P.A.B. Transcript
16 at p. 1116. He also testified that they engaged in consensual sexual activity. Transcript at pp.
17 1077-87. His testimony is inconsistent with the jury's verdict. His testimony is also
18 irreconcilable with P.A.B.'s trial testimony, which is hereafter discussed.

19 ⁵⁰ It is an indication of the Panel's view of how close a question was presented that the Panel
20 chose to express the finding in these terms, rather than a finding or "exceptional" or
21 "extraordinary" prospects for rehabilitation, though the Panel recognizes that the Court of
22 Appeals has used the three terms interchangeably.

23 ⁵¹ *Boerma*, 843 P.2d at 1248 (quoting *Kirby*, 748 P.2d at 766).

24 ⁵² *Garner*, 266 P.3d at 1048. *See also*, *State v. Silvera*, 309 P.3d 1277, 1285 (Alaska App.
25 2013). If the Panel, having considered a non-statutory mitigating factor, determines that a
defendant should still receive a sentence within the presumptive range then:

the panels' conclusion is equivalent to a finding that it *not be* manifestly unjust to
"fail to consider" the non-statutory sentencing factor. The case is therefore
governed by the final sentence of AS 12.55.175(b), which directs the three-judge
panel to "remand the case to the sentencing court, with a written statement of its
findings and conclusions, for sentencing under [the normal rules of presumptive
sentencing]."

Garner, 266 P.3d at 1051 (J. Mannheimer and J. Bolger concurring) (emphasis in original).

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1 The Panel considered the seriousness of Mr. O'Connor's offense, Mr. O'Connor
2 as an offender, the impact of the crime on P.A.B., the non-statutory mitigating factor,⁵³ and the
3 *Chaney* sentencing criteria.⁵⁴

4 The Panel found that Mr. O'Connor had committed a quite serious Sexual Assault
5 1st Degree, though his conduct was not among the most serious included within the definition of
6 the offense.⁵⁵ The Panel in this regard placed substantial reliance on P.A.B.'s 2015 trial
7 testimony.⁵⁶

8 P.A.B.'s trial testimony included the following concerning the events at issue:
9

- 10 1) She consumed approximately 7-8 mixed drinks at various bars;⁵⁷

11
12 ⁵³ The Panel is to evaluate a non-statutory mitigating factor "in the same way it would evaluate a
13 statutory mitigating factor that has been established by clear and convincing evidence." *Kirby*,
748 P.2d at 765.

14 ⁵⁴ *See generally*, AS 12.55.005 and *Kirby*, 748 P.2d at 760.

15 ⁵⁵ *See*, AS 12.55.155(c)(10).

16 ⁵⁶ The Panel is aware that Judge Saxby, per his June 4, 2015 sentencing comments, concluded
17 that Mr. O'Connor's conduct was in the "lower range of seriousness" "in comparison to other
18 Sexual Assaults in the 1st Degree." Transcript at p. 1359. Judge Saxby was not entirely certain
19 what had actually transpired and noted that the jury in the first trial had listened to P.A.B.'s
20 testimony and had acquitted Mr. O'Connor on two of the three charges, and hung on the
21 remaining charge. But he also found that Mr. O'Connor had used violent language and engaged
22 in violent actions, as claimed by P.A.B. and denied by Mr. O'Connor, and that "if anything rang
23 true throughout the trial, that testimony from the victim rang true to me." Transcript at p. 1360-
24 61. Judge Saxby during the February 17, 2021 hearing again referenced Mr. O'Connor's
25 violence and violent language and stated that: "And I guess I'd note that that throughout the
testimony that I've heard I've found her testimony to be far more credible than his about the
event that night." Transcript at p. 99. Judge Saxby noted in this regard that P.A.B. had attempted
to memorize Mr. O'Connor's license plate and promptly reported the offense once she was free
of him. Judge Saxby then stated that: "her account of it being a very bad and in some ways
violent encounter is more - - the more credible account." Transcript at p. 101. The Panel is not
bound by Judge Saxby's findings (or by an expert's testimony). *Kirby*, 748 P.2d at 767. The
Panel having considered the evidence in the record finds no material basis for not concurring
with his findings concerning P.A.B.'s credibility. So, the Panel is placing substantial reliance on
P.A.B.'s trial testimony in determining the seriousness of the offense. The Panel, however, does
not agree with Judge Saxby's characterization of the seriousness of the offense.

⁵⁷ Transcript at pp. 163-65.

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- 1 2) She thinks she left the bars at approximately 2:30 a.m.,⁵⁸
- 2 3) She was drunk;⁵⁹
- 3 4) She missed the bus, hitchhiked and was picked up by a taxi.⁶⁰
- 4 5) She intended to go to a trailer where her son and others lived but nobody
- 5 answered her knock, so she walked to a friend's home but the lights there
- 6 were off;⁶¹
- 7 6) A white truck stopped. Mr. O'Connor was driving. He offered her a ride.
62
- 8 7) She wanted to go to friend's home (David) but when they got there Mr.
- 9 O'Connor accelerated and drove past, which worried her but she had been
- 10 drinking and could not think real straight;⁶³
- 11 8) He drove to an industrial area, unlocked a fence, and then drove to a small
- 12 camper trailer, she figured they were going to have a drink and went with
- 13 him into the trailer.⁶⁴ Nothing of a sexual nature had occurred to that
- 14 point;⁶⁵
- 15 9) Once inside the next thing she remembers is that her pants were off and he
- 16 was on top of her and she was trying to get him off of her;⁶⁶ she feared
- 17 that he may kill her if she got him off of her, she thought about her
- 18 children and family;⁶⁷ he was hurting her, and he told her that wanted to
- 19 rape her ass and that he could not cum in her pussy, and that he was not
- 20 done with her yet;⁶⁸ he pulled her hair back and put his hands around her
- 21 neck, causing her to fear he would choke her, she was hollering at him to

58 Transcript at pp. 172-73.

59 Transcript at p. 217.

60 Transcript at pp. 165-70. The cab driver, Megan Patrick, testified that it was evident to her that P.A.B. had been drinking and was drunk but she seemed to be on something else as she was jerky and all over the place and stumbled at one point at some stairs. Transcript at p. 940-41, 945-46. Officer Corey Crane, the first officer on scene, testified that P.A.B. appeared to him to be intoxicated. Transcript at p. 369.

61 Transcript at p. 174.

62 Transcript at pp. 175-78.

63 Transcript at pp. 178-79.

64 Transcript at pp. 179-81.

65 Transcript at pp. 185, 186, 256.

66 Transcript at pp. 184-86. She denied that she had taken her pants off. Transcript at p. 187.

67 Transcript at pp. 186-87.

68 Transcript at p. 187.

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1 get off of her and he hollered back that he was not done with her yet, and
2 he kept telling her could not cum in her pussy and had to fuck her in the
3 ass, and she kept telling him to stop, and he threw her⁶⁹ like a rag doll; she
4 wound up on her stomach and tried to crawl forward to get away but he
5 was too heavy, he penetrated her vagina with his penis, it hurt and she told
6 him to stop and he told her he was not done with her yet;⁷⁰ he tied to use
7 lotion as a lubricant, he was not able to ejaculate and was having trouble
8 maintain an erection, and was becoming mad, saying he could not cum in
9 her pussy so he had to rape her in the ass, saying that over and over
10 again;⁷¹ she was praying, thinking about her family, and wondering if she
11 would make it out of there alive and, he then suddenly stopped, she
12 dressed, they did not speak, and he drove her to David's residence.⁷²

13 The record also reflects that Mr. O'Connor that night had: gone out with his wife
14 for pizza and then to a bar, his wife decided on the way to a second bar that she wanted to go
15 home, so he dropped her off there; he then went by himself to the second bar;⁷³ he left the second
16 bar at closing time;⁷⁴ he did not drive home and instead gave a person a ride and then drove past
17 his work site, he picked up P.A.B. shortly before 3:00 a.m.,⁷⁵ and he had access to the the place
18 he took her due to his employment.

19 The Panel concluded, in part, that Mr. O'Connor had engaged in predatory
20 behavior, at least once he had seen P.A.B., as evidenced by his picking her up, her being

21 ⁶⁹ Transcript at p.p. 187-88.

22 ⁷⁰ Transcript at pp. 189-90. Karyn Warner, a Sexual Assault Nurse Examiner (SANE) who is
23 part of a Sexual Assault Response Team (SART), testified that she performed a SART
24 examination of P.A.B. beginning at approximately 7:00 a.m. on the day of the offense and that:
25 at that point P.A.B.'s blood alcohol content was .063 (at 7:32 a.m.) and she tested positive for
marijuana, but she did not appear at that point to be intoxicated, P.A.B. had apparently recent
bruises and abrasions, including bruising on her left shoulder consistent with a fingerprint mark,
an abrasion on her left shoulder towards the chest area, also possibly consistent with a fingerprint
mark, bruises on her inner thigh near her genitals, abrasions on her back, and though she does not
necessarily expect to find internal injuries she found a bruise on B.A.C.'s hymen and a laceration
to her perineal area. Transcript at pp. 402-51, 479, 521.

⁷¹ Transcript at pp. 190-91.

⁷² Transcript at pp. 191-92.

⁷³ 2015 trial transcript at pp. 1042-44.

⁷⁴ Transcript at pp. 1047.

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1 intoxicated and vulnerable, his driving past her friend's house, his taking her to a remote site
2 accessed through a locked gate, and his committing the sexual assault at that location.

3 The Panel largely addressed Mr. O'Connor as an offender in the context of
4 addressing the proposed non-statutory mitigating factor, per the above-discussion.

5 P.A.B. did not speak at the June 4, 2015, November 3, 2020, or February 17, 2015
6 sentencing-related hearings in the trial court. She did not appear during the Panel hearing. She
7 did not submit a written statement to be included with any of the PSRs. But the Panel concluded
8 based on the trial record that the sexual assault was a horrific event for her and that she likely
9 will experience serious lasting related trauma.

10 The Panel considered all of the *Chaney* sentencing criteria⁷⁶ and determined that
11 community condemnation and the need to reaffirm societal norms are the most important
12 *Chaney* considerations due to the nature and seriousness of the offense, and that considering
13 those factors and the totality of the circumstances, the non-statutory mitigating factor did not
14 warrant the Panel making a downward adjustment from the bottom of the presumptive 20-30
15

16
17 ⁷⁵ Transcript at pp. 1143-1148.

18 ⁷⁶ The Alaska Supreme Court in *Chaney* stated:

19 Under Alaska's Constitution, the principles of reformation and necessity of
20 protecting the public constitute the touchstones of penal administration. Multiple
21 goals are encompassed within these broad constitutional standards. Within the
22 ambit of this constitutional phraseology are found the objectives of rehabilitation
23 of the offender into a noncriminal member of society; isolation of the offender
24 from society to prevent criminal conduct during the period of confinement,
25 deterrence of the offender himself after his release from confinement or other
penological treatment, as well as deterrence of other members of the community
who might possess tendencies toward criminal conduct similar to that of the
offender, and community condemnation of the individual offender, or in other
words, reaffirmation of societal norms for the purpose of maintaining respect for
the norms themselves.

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1 year sentencing range, noting the very close call in finding the non-statutory mitigator, that the
2 factors supporting finding the mitigator served to justify a sentence at the bottom end but not
3 below the presumptive range, and that his rehabilitative prospects and recidivism risk would be
4 further addressed in the context of his eligibility for discretionary parole; and, that a sentence at
5 bottom of the presumptive range would also serve the sentencing goal of general deterrence.

6 The Panel also found, to the extent it had to consider the remainder of Judge
7 Saxby's Judgment under the circumstances, that: individual deterrence would be served by the 5-
8 years of suspended jail time Judge Saxby had imposed; and, Mr. O'Connor's rehabilitation
9 would be further addressed by means of the probation conditions Judge Saxby had imposed.

10 The Panel under such circumstances, per *Garner* and the related caselaw, did not
11 accept this case on this basis and did not impose sentence. A remand for sentencing is not
12 necessary as Judge Saxby has already imposed sentence.

13 **E. Eligibility for Discretionary Parole**

14 The Panel considered Mr. O'Connor's request for discretionary parole eligibility
15 under AS 12.55.175(c).⁷⁷ He bears the burden of proving by clear and convincing evidence
16 based on the totality of the circumstances that manifest injustice would result if he is sentenced
17 within or below the presumptive range and he is not made eligible for discretionary parole after
18
19
20
21

22 477 P.2d at 444 (citations omitted).

23 ⁷⁷ Mr. O'Connor referenced AS 12.55.175(e) but he did not prove that: manifest injustice would
24 result from the imposition of a sentence within the presumptive sentencing range; or, that a
25 sentence below the presumptive range should be imposed because of his exceptional potential for
rehabilitation. So, the Panel does not view the restriction imposed under AS 12.55.175(e) on its
discretionary parole authority under AS 12.55.175(e) discussed in *Luckart* (314 P.3d at 1232-33)
to apply, even if such a decision is materially based on Mr. O'Connor's prospects for
rehabilitation.

MEMORANDUM AND ORDER

State of Alaska v. Dwight Samuel O'Connor, Case No. 3AN-11-8340 CR
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1 serving a certain period of time, which eligibility may be conditioned on his satisfying certain
2 conditions while incarcerated.⁷⁸

3 The Panel found that Mr. O'Connor had shown by clear and convincing evidence
4 that manifest injustice⁷⁹ would result if he is not made eligible for discretionary parole after
5 having served half of the jail sentence imposed by Judge Saxby provided he has successfully
6 completed a SOTP while incarcerated. The Panel's decision is based on the following analysis.

7
8 Mr. O'Connor has shown that he differs from the typical person convicted of
9 Sexual Assault 1st Degree due to his above-discussed prospects for rehabilitation. A defendant's
10 prospects for rehabilitation are one *Chaney* sentencing criteria, though related to isolation,
11 another *Chaney* criteria. The Panel has necessarily addressed and prioritized the *Chaney* criteria
12 based on the totality of the present record. Dr. Becker testified that Mr. O'Connor should be
13 required to complete SOTP, and that his doing so would provide another protective factor with
14 respect to his risk of reoffending. His successful completion of a SOTP, whether he continues to
15 deny his offense or not, would demonstrate significant and substantial progress towards actual
16 rehabilitation, building on his model post-offense conduct (on pre-trial release and while
17
18
19
20

21 ⁷⁸ See, *Luckart*, 314 P.3d at 1232; *Balallo v. State*, 2021 WL 3521063 at n 7 (Alaska App.
August 11, 2021) (cited per *McCoy*).

22 ⁷⁹ The Alaska Court of Appeals has recognized that this is a highly subjective standard, and that
23 the phrases it has used to describe the concept do not add much to the statutory language. See,
24 *Smith*, 711 P.3d at 568-69. The descriptive phrases that have been used include: "obvious
25 unfairness" (See, *Lloyd v. State*, 672 P.2d 152, 154 (Alaska App. 1983); *Smith*, 711 P.2d at 508;
Totemoff v. State, 739 P.2d 769, 775 (Alaska App. 1987)); "shock the conscience" (*Smith*, 711
P.3d at 568); "plainly unfair" (*Smith*, 711 P.2d at 569; *Knipe v. State*, 305 P.3d 359, 363 (Alaska
App. 2013)); and, "manifestly too harsh" (*Scholes v. State*, 274 P.3d 496, 500 (Alaska App.
2012)).

MEMORANDUM AND ORDER

State of Alaska v. Dwight Samuel O'Connor, Case No. 3AN-11-8340 CR
Page 24 of 25

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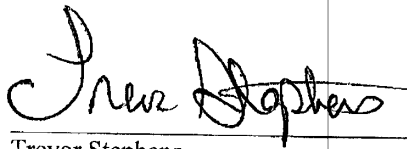
1 incarcerated).⁸⁰ He will have served at least half the jail sentence imposed by Judge Saxby. And
2 at that point, the *Chaney* calculus would change – with rehabilitation entitled to greater weight,
3 and being addressed in his parole conditions, individual deterrence would be enhanced as he
4 would face the additional consequence of returning to prison to serve part or all of the initially
5 imposed jail sentence if he violated a parole condition, and community condemnation and the
6 need reaffirm societal norms would still be very important considerations but members of the
7 community considering the matter would also take note of his having completed SOTP, a
8 continuation of his model post-offense conduct.⁸¹

9
10 The Panel, as discussed above, is herewith addressing his eligibility for
11 discretionary parole in a separate order.

12 **IT IS SO ORDERED.**

13 Dated at Ketchikan, Alaska this 7th day of October 2021.

14 CERTIFICATION
15 Copies Distributed
16 Date 10/7/21
17 To D. Babb, DA
18 S. Gruenstein
19 PO Tolapson
20 GLCC
21 By DP

22 
23 Trevor Stephens
24 Superior Court Judge
25 Administrative Head



20 ⁸⁰ See, *Luckart*, 314 P.3d at 1233. The Panel is not here referencing the type of victim-centered
21 conduct that would support the exemplary post-offense conduct non-statutory mitigating factor.
22 See, *Olmstead v. State*, 477 P.3d 656 (Alaska App. 2020).

23 ⁸¹ The Panel notes that it can order that a defendant is eligible for discretionary parole, but once
24 eligible the decision as to whether and when the defendant is actually released on discretionary
25 parole will be determined by the Parole Board applying the considerations set forth at AS
33.16.100(a),(g), which considerations include his rehabilitation, his risk of reoffending
(isolation), and the seriousness of his crime and whether his release on discretionary parole
would diminish the same (community condemnation/reaffirmation of societal norms). The Panel
also notes that it did not expressly condition Mr. O'Connor's eligibility on his continued good
behavior while incarcerated but the Parole Board will consider the same per AS 33.16.100(g) in
making its parole decision.

MEMORANDUM AND ORDER

State of Alaska v. Dwight Samuel O'Connor, Case No. 3AN-11-8340 CR
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JGR
FC

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

State of Alaska,

Plaintiff,

vs.

Dwight Samuel O'Connor,

Defendant.

CASE NO: 3AN-11-08340CR

JUDGMENT AND ORDER
OF COMMITMENT / PROBATION

DOB: 12/14/1959

APSIN: 0387013

DL/ID: 0387013

ATN: 113360931

ST: AK ☐ CDL

Plea: ☐ Guilty ☐ Not Guilty ☐ No Contest

Plea Agreement: ☐ Yes ☐ No ☐ Partial

Trial: ☐ Court ☒ Jury

RECEIVED
JUN 29 2015

Office of the District Attorney
Third Judicial District
Anchorage, Alaska

Defendant has been convicted of:

CTN: Offense Date: Offense:

001 07/21/2011 AS11.41.410(a)(1): Sex Assault 1-
Penetrate w/o Consent

DV Offense per
AS 18.66.990(3)(G)

Class:

Unclassified Felony

(Yes or No)

No

Defendant came before the court on (sentencing date) June 4, 2015 with counsel, Brendan Kelley of the Office of Public Advocacy, and the District Attorney present.

SENTENCE

A. INCARCERATION

It is ordered that the defendant is committed to the care and custody of the Commissioner of the Department of Corrections for the following period(s):

CTN: Period:

001 25 years with 5 years suspended.

Total unsuspended term of incarceration: 20 years

Defendant to be credited for time already served in this case.

☐ Under AS 33.16.090(a)(2) and AS 12.55.115, the defendant is not eligible to be considered for discretionary parole until the defendant has:

☐ served the following term: _____

☐ completed the following conditions: _____

B. FINES

The Defendant is fined as follows:

CTN: Fine:

001 Defendant is fined \$ _____ with \$ _____ suspended. The unsuspended \$ _____ shall be paid by _____. ☐ safety corridor ☐ hwy work zone

C. SURCHARGES

1. Police Training Surcharge. The defendant shall pay the following police training surcharge(s) to the court pursuant to AS 12.55.039 within 10 days:
CTN: Surcharge:
001 ☒ \$100 (Felony) ☐ \$75 (DUI/Refusal) ☐ \$50 (Misd) ☐ \$10 (Infrac)
2. ☒ Initial Jail Surcharge. Defendant was arrested and taken to a correctional facility or is being ordered to serve a term of imprisonment. Therefore, the defendant immediately pay a correctional facilities surcharge of \$100 per case to the Department of Law Collections Unit, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501 AS 12.55.041(b)(1).
3. Suspended Jail Surcharge. Defendant is being placed on probation. Therefore, the defendant pay an additional \$100 correctional facility surcharge. This surcharge is suspended and must only be paid if defendant's probation is revoked and, in connection with the revocation, defendant is arrested and taken to a correctional facility or jail time is ordered served. AS 12.55.041(c).

D. LICENSE ACTIONS

1. ☐ License Revocation. The defendant's driver's license is revoked for _____
☐ days ☐ years ☐ _____, and shall be immediately surrendered to the court.

Mandatory Revocation
☐ A motor vehicle was used in commission of the offense—AS 28.15.181(a)
☐ Drug offense (age 13-20) or offense involving a firearm (age 13-17)—AS 28.15.185
☐ Driving a commercial motor vehicle without being lawfully licensed—AS 28.33.150

Optional Revocation
☐ Motor vehicle offense resulting in accident causing death—AS 28.15.182

Commercial Vehicle Used in the Offense
☐ Weighing more than 26,000 pounds
☐ Designed to transport >15 passengers
☐ Used to transport hazardous materials
2. Limited License. The court will not consider issuing a limited license unless all the conditions in AS 28.15.201 and .181 or .182 are met.
☐ The conditions of the statutes have been met.
A limited license is granted as follows: _____

E. DNA IDENTIFICATION

If this conviction is for a "crime against a person" as defined in AS 44.41.035, or a felony under AS 11 or AS 28.35, the defendant is ordered to provide samples for the DNA Registration System when requested to do so by a health care professional acting on behalf of the state and to provide oral samples for the DNA Registration System when requested by a correctional, probation, parole or peace officer. AS 12.55.015(h).

F. RESTITUTION

- ☐ Defendant is ordered to pay restitution as stated in the Restitution Judgment (form CR-465) and to apply for an Alaska Permanent Fund Dividend, if eligible, each year until restitution is paid in full. ☐ The amount of restitution will be determined as provided in Criminal Rule 32.6(c)(2).

G. OTHER

Defendant is ordered to pay cost of appointed counsel in the amount of \$2,500.00 according to Criminal Rule 39.

H. PROBATION

After serving any term of incarceration imposed, the defendant is placed on probation for 15
☐ months ☒ years under the following conditions:

GENERAL CONDITIONS OF PROBATION

1. The defendant shall report to the Department of Corrections Probation Office no later than the next business day following any release from incarceration on any criminal matter; or, if no jail time is to be served, immediately after sentencing.
2. The defendant shall report in person between the first day and the tenth day of each month, or as otherwise directed, to your assigned office of the Department of Corrections. Complete in full a written report when your probation officer is out of the office to ensure credit for that visit. You may not report by mail unless you secure prior permission to do so from your probation officer.
3. The defendant shall secure prior permission of a probation officer of the Department of Corrections before changing employment, residence, or leaving the region of residence to which assigned.
4. The defendant shall make a reasonable effort to maintain steady employment approved by your probation officer and to support your legal dependants. The defendant shall not voluntarily change or terminate employment without receiving permission from your probation officer to do so. If discharged or if employment is terminated (temporarily or permanently) for any reason, you will notify your probation officer no later than the next business day. You are required, at the discretion of your probation officer, to provide proof of income.
5. The defendant shall not own, possess, purchase, transport, handle or have in your custody, residence, or vehicle, any firearm, ammunition, explosives, or weapon(s) that is capable of inflicting bodily harm or incapacitation. The defendant shall not carry any deadly weapon on your person except a pocket knife with a 3" or shorter blade. You must submit to any search for the aforementioned weapons.
6. The defendant shall not knowingly associate with a person who is on probation or parole or a person who has a record of a felony conviction unless prior permission to do so has been granted by a probation officer of the Department of Corrections. The defendant shall not telephone, correspond with or visit any person confined in a prison, correctional institution, jail, halfway house, work release center, community residential center, juvenile correctional center, etc. without prior approval from a probation officer. You must notify your probation officer no later than the next business day of any contact you have with a prisoner or felon.
7. The defendant shall not consume intoxicating liquor. The defendant shall submit to breath analysis at the direction of a probation officer.
8. The defendant shall comply with all municipal, state and federal laws.

9. The defendant shall notify your probation officer, no later than the next business day, of any contact with any law enforcement officer.
10. The defendant shall provide information to your probation officer regarding any motorized vehicle that you own, lease, purchase or operate. That information includes the make, model, year, color, license number, the registered owner and current insurance information.
11. The defendant shall pay all restitution and fines as ordered and shall apply for an Alaska Permanent Fund Dividend every year in which you are a resident eligible for a dividend until the restitution and fines are paid in full.
12. The defendant shall comply with all Court orders listed above by the deadline(s) stated. Abide by any special instructions given by the Court or any of its duly authorized officers, including probation officers of the Department of Corrections.

SPECIAL CONDITIONS OF PROBATION

1. The defendant shall have no contact with the victim(s) of their crime(s) including Patty Analok-Bordenelli. The prohibited contact includes but is not limited to: in-person contact, written correspondence, taped conversations, electronic contact (internet or e-mail), telephonic contact, stalking, harassment and communication of any nature through a third party, without the prior written permission of the probation officer and the sex offender treatment provider. The defendant shall not enter onto the premises, travel past, or loiter near the victim's residence, place of employment, or other places frequented by the victim(s).
2. The defendant shall not use, possess, handle, purchase, give or administer any alcohol and/or intoxicating liquor. The defendant shall not have on their person, in their residence or vehicle or any vehicle under their control, any alcohol and/or intoxicating liquor. The defendant shall submit to any testing upon request or at the direction of a probation officer. The defendant shall submit to a search of their person, personal property, residence, vehicle or any vehicle over which they have control, for the presence of alcohol and/or intoxicating liquor.
3. The defendant shall not use, possess, purchase, consume or ingest any product, preparation, mixture, or substance, nor possess any device intended to conceal alcohol or controlled substance use or to subvert a bodily fluid testing process. The defendant shall submit a sufficient sample of your bodily fluids for testing in a timely manner and according to the direction of a Probation Officer. The defendant shall submit to a search of their person, personal property, residence, vehicle or any vehicle under which they have control, for the aforementioned items.
4. The defendant shall not enter any place where alcohol is the main item for sale.
5. The defendant shall obtain a sex offender evaluation/risk assessment from a DOC-approved sex offender treatment provider to determine the need for sex offender monitoring/counseling/ treatment. The defendant shall follow all recommendations.

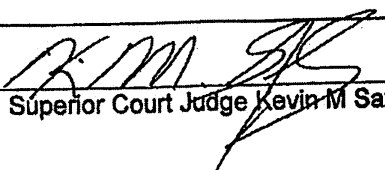
6. The defendant shall continue active participation and attendance in Alaska Department of Corrections' approved sex offender programming to the probation officer's satisfaction. The defendant shall obtain prior permission of the probation officer before voluntarily discontinuing sex offender programming. If released, removed or terminated from treatment (temporarily or permanently) for any reason, the defendant shall notify the probation officer on the next working day.
7. The defendant shall actively participate in Alaska Department of Corrections' approved treatment programming as directed by the probation officer. The defendant shall sign and abide by all conditions of the treatment program, which will include regular periodic polygraph examinations and may include plethysmograph assessment, and physiological and/or psychological testing, as well as other methods of ongoing assessment.
8. The defendant shall sign releases of information to authorize the exchange of verbal and written information between the assessment provider, treatment provider, polygraph examiner and Alaska Department of Corrections' staff members. Additionally, during the course of supervision and treatment, The defendant shall authorize the exchange of information with other individuals who are identified by the probation officer as having an essential role in supervision and treatment in the community, including, but not limited to medical/mental health/psychiatric providers, substance abuse treatment providers, physiological assessment technicians, and clinicians providing treatment to victims and/or family members.
9. The defendant shall, if decided appropriate by your probation officer and sex offender treatment provider, enter and successfully complete any other Department-approved programs, including but not limited to substance abuse treatment. The defendant shall sign releases of information to enable other programs to exchange verbal and written information with the probation officer and sex offender treatment provider. The defendant shall, if determined necessary by an appropriate mental health or substance abuse professional, enroll in a residential mental health or substance abuse program for a length of time determined necessary by the appropriate professionals. The defendant shall also comply with use of medications prescribed as part of the treatment program.
10. The defendant shall submit to the collection of a buccal swab and taking of fingerprints for the purpose of creating a DNA identification system pursuant to AS 44.41.025 and AS 44.41.035.
11. The defendant shall advise all members of the household in which they are residing of their criminal history, even when the residence is temporary. The probation officer may discuss the circumstances of the criminal history with any household member.
12. Unless the probation officer agrees, pursuant to General Condition No. 6, the defendant shall not associate with other felons unless they are in a treatment program together and have a specific assignment from the approved treatment provider that requires collaborative work.

I. BOND(S)

Any appearance or performance bond in this case:

- ☒ is exonerated.
☐ is exonerated when defendant reports as ordered to jail to serve the sentence.
☐ was forfeited and any forfeited funds shall be applied to the restitution.
☐

June 4, 2015
Effective Date


Superior Court Judge Kevin M Saxby

NOTICE TO DEFENDANT

You are advised that according to the law, the court may at any time revoke your probation for cause or modify the terms or conditions of your probation. You are subject to arrest by a probation officer with or without a warrant if the officer has cause to believe that you have violated a condition of your probation. You are further advised that it is your responsibility to make your probation officer aware of your adherence to all conditions of probation set forth above.

Sentence Appeal. If you are ordered to serve more than two years in jail, you may appeal the sentence to the court of appeals on the ground that it is excessive. (However, you may not appeal the sentence as excessive if it was imposed in accordance with a plea agreement that provided for a specific sentence or a sentence equal to or less than a specified maximum sentence. If the sentence was imposed in accordance with a plea agreement that provided for a minimum sentence, you may appeal as excessive only the part of the sentence that is longer than the minimum sentence by more than two years.) Your appeal must be filed within 30 days of the date of distribution stated below. If you are sentenced to serve two years or less in jail, you may seek review of your sentence by filing a petition for review in the supreme court. To do this, you must file a notice of intent to file a petition for sentence review within 10 days of the date of distribution stated below. See Appellate Rules 215 and 403(h) for more information on time limits, procedures and possible consequences of seeking review of your sentence.

- ☒ **REGISTRATION REQUIREMENT.** Because you have been convicted of one of the offenses listed in AS 12.63.100, you must register as described in the attached form (CR-471, Sex Offender and Child Kidnapper Registration Requirements).

I certify that on 6/29/15
a copy of this judgment was sent to:

☒ District Atty Gruenstein
by ☒ mail ☐ other

☒ Defense Atty B. Kelley (OPA)
by ☒ mail ☐ other

☐ Pro Per Defendant _____
by ☐ mail ☐ other

☒ DOC / Adult Probation
Judicial Assistant [Signature]

I certify that on _____ a copy of this
judgment was sent to:

☐ District Atty _____ by ☐ mail ☐ other

☐ Defense Atty _____ by ☐ mail ☐ other

☐ Defendant by ☐ mail ☐ other

☐ Exhibit Clerk ☐ Adult Probation

☐ Police/AST ☐ DPS-Fingerprint Section

☐ Jail ☐ DPS - R&I - Anchorage

☐ CFEC ☐ _____

☐ VPSO/Village Council at _____

☐ DMV-mail to 1300 W. Benson Blvd., Anch., AK 99503

☐ with surrendered license/ID # _____

Clerk: _____

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 STATE OF ALASKA,)
4)

5 Plaintiff,)
6)

7 v.)
8)

9 DWIGHT SAMUEL O'CONNOR,)
10)

11 Defendant.)
12)

Case No. 3AN-11-8340 CR

13 ORDER RE: DISCRETIONARY PAROLE

14 Per the discussion during the September 30, 2021 hearing before the Three-Judge
15 Panel and in the Panel's October 7, 2021 Memorandum and Order, the Panel in exercise of its
16 authority per AS 12.55.175(c) and AS 33.16.090, orders that Mr. O'Connor is eligible to apply
17 for discretionary parole after serving one-half of the jail sentence imposed by Judge Saxby in his
18 June 4, 2015 Judgment and Order of Commitment/Probation conditioned on his having
19 successfully completed a Department of Corrections (DOC) sex offender treatment program.
20 The Panel to the extent it has the authority, orders that DOC make such a program reasonably
21 available to Mr. O'Connor in a timely manner.

22 IT IS SO ORDERED.

23 Dated at Ketchikan, Alaska this 7th day of October 2021.

24 CERTIFICATION
Copies Distributed

25 Date 10/7/21

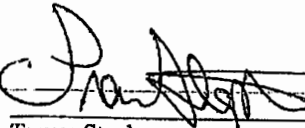
To: D. Bette, DA

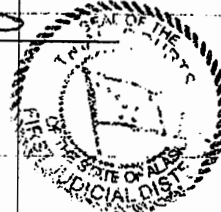
J. Grunstein

PO Torgerson

CCC

By DR


Trevor Stephens
Superior Court Judge
Administrative Head



ORDER RE: DISCRETIONARY PAROLE

State of Alaska v. Dwight Samuel O'Connor, Case No. 3AN-11-8340 CR

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Alaska Court System